

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

VANG XIONG,

Plaintiff,

ORDER

v.

17-cv-71-wmc

CAROLYN W. COLVIN,
Acting Commissioner of Social Security,

Defendant.

On July 11, 2017, the court issued an order and judgment remanding this case to the commissioner for further proceedings under sentence four of 42 U.S.C. § 405(g) pursuant to stipulation of the parties. Now before the court is plaintiff Vang Xiong's attorney's petition for fees pursuant to § 406(b)(1) in the amount of \$3,460.75 (dkt. #18), to which defendant has not objected.

Fees under 42 U.S.C. § 406

As part of its judgment, a court may allow "a reasonable fee . . . not in excess of 25 percent of the . . . past-due benefits" awarded to the claimant. § 406(b)(1)(A). The fee is payable "out of, and not in addition to, the amount of [the] past-due benefits." *Id.* Counsel asks the court to approve an attorney fee award in the amount of \$3,460.75, which represents the difference between the prior EAJA fee award of \$6,500.00 (dkt. #16) and \$9,960.75 withheld from the amount awarded to plaintiff in past-due benefits. Having considered the supporting materials filed by plaintiff's attorney, and hearing no objection from plaintiff or defendant, the court will grant the motion. The fees requested

by counsel are reasonable in light of the time she spent on this case and the favorable result she obtained for plaintiff while working on a contingency basis.

Of course, counsel is not allowed to recover both awards. Section 406(b) has been harmonized with the EAJA; though fee awards may be made under both the EAJA and § 406(b), a claimant's attorney must refund to the claimant the amount of the smaller fee. *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) (explaining that “an EAJA award offsets an award under Section 406(b)”).

ORDER

IT IS ORDERED that counsel’s motion for reasonable attorney fees under 42 U.S.C. § 406(b)(1) in the amount of \$3,460.75 (dkt. #18) is GRANTED. That sum shall be released to plaintiff’s counsel and the remaining portion of the withheld money, \$6,500.00, shall be released to plaintiff Vang Xiong.

Entered this 8th day of February, 2019.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge